


This instrument prepared by
and upon recording return to:

James L. Webb
Bradley Arant Rose & White LLP
One Federal Place
1819 5th Avenue North
Birmingham, AL 35203
205-521-8200


20081002000390050 1/5 \$25.00
Shelby Cnty Judge of Probate, AL
10/02/2008 01:49:01PM FILED/CERT

STATE OF ALABAMA)

SHELBY COUNTY)

SECOND MORTGAGE MODIFICATION AGREEMENT

(Cross Ref: Instrument Numbers 20050404000152850,
2007050100202050 and 20081002000390040)

THIS SECOND MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of this 25th day of September, 2008, by **GREY OAKS PROPERTIES, L.L.C.**, an Alabama limited liability company, whose address for notice purposes is c/o Skye Realty Management, 1927 First Avenue North, 5th Floor, Birmingham, Alabama 35203, Attention: B. Sanders (the "Mortgagor"), in favor of **FIRST COMMERCIAL BANK**, an Alabama banking corporation, whose mailing address is 800 Shades Creek Parkway, Birmingham, Alabama 35209 (the "Mortgagee").

Recitals

A. Mortgagor previously obtained a loan in the principal amount of \$9,535,000, as evidenced by that certain Promissory Note dated March 31, 2005 (as amended thereafter, the "Note").

B. The Note is secured by that certain Mortgage and Security Agreement dated March 31, 2005, and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 20050404000152850, as amended by that certain First Amendment to Mortgage and Security Agreement dated March 30, 2007, and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 2007050100202050, and as assigned to the Mortgagee pursuant to that certain Assignment of Note, Mortgage and Related Loan Documents dated September 25, 2008, and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 20081002000390040 (as amended, the "Mortgage"). Capitalized terms used herein and not defined shall have the meaning assigned to them in the Mortgage.

Recording tax on the \$9,535,000 of indebtedness secured hereby was paid upon recordation of the Mortgage recorded March 31, 2005, in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 20050404000152850.

C. The Mortgagor and the Mortgagee have agreed that the terms of the Mortgage be amended to revise the lot release prices set forth in the Mortgage. The Mortgagor acknowledges that the execution of this Agreement confers a real and substantial benefit upon Mortgagor and further acknowledges that it is supported by good and valuable consideration.

Agreement

NOW, THEREFORE, in consideration of the sum of Ten and No/100ths Dollars (\$10.00), the recitals hereinabove set forth which are an integral part of this Agreement and not mere recitals thereto, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound agree as follows:

1. Paragraph 50 of the Mortgage is hereby deleted in its entirety and replaced with the following:

(50) Partial Release. Mortgagee agrees to release from the lien of this Mortgage any portion of the Mortgaged Property which has been subdivided into a separate lot provided that each of the following requirements and conditions are met:

(a) With respect to any subdivision created after the date hereof, Mortgagee has approved in writing the size, configuration, location and all other aspects and characteristics of such lot and the impact that the creation thereof has on the remainder of the Mortgaged Property;

(b) Such lot has been legally created and the subdivision therefore approved by Mortgagee and all applicable governmental authorities and has been recorded in the Office of the Judge of Probate of Shelby County, Alabama;

(c) No Event of Default shall have occurred and be continuing under this Mortgage, the Note, the Loan Agreement or any of the other Loan Documents; and

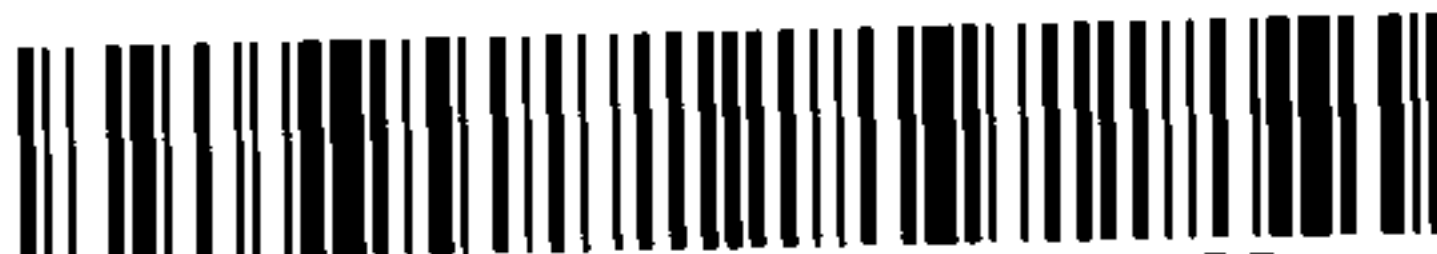
(d) Such lot has been sold to a bona fide purchaser and Mortgagee receives the greater of (i) 100% of the net proceeds payable to Mortgagor as a result thereof, or (ii) with respect to the first one hundred forty-one (141) lots sold, Forty-Five Thousand and No/100 Dollars (\$45,000.00), and with respect to the remainder of the lots sold thereafter, such amount as is reasonably approved by the Mortgagee.

Except as expressly amended hereby, the Mortgage shall remain in full force and effect in accordance with its terms.

The Mortgagor represents and warrants that the representations and warranties set forth in the Mortgage are as true and correct on the date hereof as when initially made, except as such representation or warranty expressly relates to another date.


The Mortgagor acknowledges and agrees that there are no offsets or defenses to the obligations set forth in the Mortgage, as hereby amended, and represents that there are no Events of Default existing on the date hereof, nor are there any facts or consequences which will or could lead to an Event of Default under the Mortgage.

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IN WITNESS WHEREOF, the Mortgagor and the Mortgagee have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MORTGAGOR:


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GREY OAKS PROPERTIES, L.L.C.

By: William G. Sanders, Jr.
Name: William G. Sanders, Jr.,
Title: Authorized Member

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that William G. Sanders, Jr., whose name as Authorized Member of Grey Oak Properties, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 18th day of September 2008.

[NOTARIAL SEAL]

Judy Bearden
Notary Public
My commission expires **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**
MY COMMISSION EXPIRES: July 21, 2012
BONDED THRU NOTARY PUBLIC UNDERWRITERS

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

MORTGAGEE:

FIRST COMMERCIAL BANK

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By: [Signature]
Name: Jason EPPENGER
Title: Commercial Loan Officer

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jason Eppenger, whose name as Comm. Loan Officer FIRST COMMERCIAL BANK, an Alabama banking corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the 14 day of September 2008.

Helen P. Becker
Notary Public
My commission expires: _____

[NOTARIAL SEAL]

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 14, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS